

In the Court of Sudhakar Pandey
P.O. Motor Accident Claim Tribunal, Bhojpur at Ara.
M.V. Claim Case No. 31/2008

In the Matter of:

1) **Shakuntala Devi**

W/o Sri Laxman Prasad Sah,
R/o- P.O. Masurhi,
P.S.-Jagdishpur, District-Bhojpur.

.....Claimant.

Versus

1) United India Insurance Company Limited,

Through Branch Manager,
Laxmi Apartment 2nd Floor, Frazer Road.
District-Patna.

2) M/s Shristi Developers Pvt. Limited,

Through Shailendra Kumar Bazar Samittee Patna City,
S/o Sri Ramprit Singh,
R/o-Noorpur, P.S.-Malsalami,
District-Patna.

3) Binod Kumar (Dumper Driver),

S/o Sri Yogi Rai,
R/o-Maujipur, P.S.-Fatuha,
District-Patna.

.....Opposite Parties.

Counsel for Claimant: Sri Surya Prakash Tiwari, Advocate.

Counsel for O.P. No. 1: Sri Mihir Kumar Singh, Advocate.

Counsels for O.P. No. 2 & 3: None.

Date of Judgment: 10.03.2026

Judgment

- 1) The present claim petition has been filed u/s 166 of M.V. Act 1988 against the opposite parties on account of the death of Dinesh Kumar Sah in a motor vehicle accident for compensation of Rs. 5,00,000/- (Rupees five lacs) by Shakuntala Devi, the mother of the deceased.
- 2) The case of the claimant in brief is that on 06.06.2007 in the morning, deceased Dinesh Kumar Sah was going from his house in village Masuri to Ara for study, meanwhile Upendra Kumar, Jitendra Sah brother in law of Upendra Kumar and two years old son of Upendra Kumar were going by motorcycle Bajaj 100 bearing registration no. BR3C-3760 and they took her son on their motorcycle. When the motorcycle was crossing NH-30 near Koda about 7:15 O'clock, one vehicle Dumper bearing registration no. BR1G5728 which was being driven in a rash and negligent manner by its driver ran over the motorcycle due to which motorcycle was damaged and it caught fire. In this accident, Upendra Kumar and Dinesh Kumar died in Sadar Hospital Ara during treatment. Jitendra Kumar was referred to PMCH for better treatment in injured condition. The little child Gupteshwar was being treated by some private doctor. On the fard-beyan of Shiv Ji Sah uncle of deceased Dinesh Kumar, Jagdishpur P.S. case no. 178/2007 dated 06.06.2007 u/ss 279/337/338/304(A)/427 IPC was registered against the unknown driver of Dumper bearing registration no. BR1G5728.
- 3) The O.P. No. 01 appeared on 15.04.2014 and filed written statement on 09.05.2014. The O.P. No. 02 and O.P. No. 03 did not appear and they were proceeded ex-parte vide order dated 22.3.2024.
- 4) The O.P. No. 1 has stated in its written statement that the present claim petition filed by the claimant is not maintainable either in law as well as in facts and is fit to be dismissed. The claimant has not valid cause of action against the answering O.P. The claim case is also not maintainable in

view of the facts that the claimant has not complied with provision of Rule 226 & 227 of the Bihar Motor Vehicle Rules by filing sufficient court fee which is mandatory. All the material allegations made in the petition are false and baseless, hence the petition under section 166 of M.V. Act is liable to be dismissed in limine with cost against the answering O.P. Company. The claimant's case is barred by principles of waiver, estoppels and acquiescence. The claimant has not filed proper paper/document required under the law and unless these papers are filed, the case may not proceed. The cause of accident as alleged by the claimant is not correct. The claim of the claimant has no legs to stand because he has incorporated in claim petition frivolous, exorbitant, fabricated and exaggerated figure of Rs. 5 Lac by way of compensation. The claim petition suffers from misjoinder & non-joinder of the necessary parties unless the owner of the Motorcycle driver and insurer of the said Motorcycle (C.T. Bajaj 100 C.C.) bearing Reg. No. BR-3C/3760 which collided face to face with Dumper Truck bearing Regd. No. BR-1G/5728 are not made party in this case, hence the claim petition may not proceed and is liable to be dismissed. The claimant has not mentioned the policy number in their claim petition and as such in absence of the policy the claim of petitioner is not maintainable against the answering O.P. company. In absence of policy detailed, the answering O.P. company is not in a position to verify whether vehicle is insured with this company at the time of alleged accident. The answering O.P. has not yet received any copy of the record or report of the alleged accident from the concerned police station case u/s 158/06 of Motor Vehicle Act nor any information regarding the alleged accident from the driver of dumper was given to insurance u/s 134(c) of the M.V. Act which absolves, the insurer from any liability. Liability, if any given of third party(s) is to be imposed on the owner/driver on the concerned vehicle. The cause and manner of the accident dated 06.06.2007 is vague and the material facts have been concealed by the claimant. The deceased was not any doing any job because he was minor

and has no income. The answering O.P. company specifically denying the liability on the ground that the driver of the said dumper Truck at the material time of accident was not having valid, proper effective driving license to drive the said vehicle as such violated terms and condition laid down u/s 3 Central Motor Vehicle Rules and also not file Driving License of truck on court record. The answering O.P. United India Insurance Company Ltd. is not liable any compensation to the claimant since the dumper Truck No. BR-1G 5728 has not having valid permit and fitness certificate at the time of alleged accident as per decision Hon'ble Supreme Court reported in 2004 A.C.J Page No. 2094 National Insurance Company v/s Challabhatemma. The claimant should produce original policy certificate if any from owner of the vehicle or from his legal representative. The F.I.R., P.M. Report, Original Insurance Certificate, Permit, fitness, Driving License, Registration, covering date of accident of the vehicle in question may be directed to be produced and proved by the claimant, failing which it shall be presumed that there is statutory violation of the policy condition u/s 147, 149, 149(2)K, 169 sub-clause 2 of M.V. Act. Without prejudice and without accepting the contention of the claimant, the answering O.P. submitted that if the O.P. is liable to pay compensation, when it covers under the provision of section 147 of M.V. Act. Without prejudice and admitting the claim of compensation amount as claimed by the claimant in para no. 11 in claim petition is exorbitant, illegal, executive and not in accordance with law. It is not out of place to mention hence that apex court also Supreme Court has decided 50% of the deceased shall be deducted towards his personal expenses when the deceased was a bachelor. The answering O.P. company seeks permission to defend the case as well as place its stand before the tribunal as provided section 170 of M.V. Act . If the owner contravened the provision of the M.V. Act and the rule framed under Act and has committed the breach of the terms and condition of the policy, hence the company is not liable to pay any compensation. Without prejudice and admitting whatsoever, the

company reserves its right to take protection under the provision of Insurance Act and Rules. The O.P. United India Ins. Co. Ltd. has tried to deny the facts stated in the claim petition but if any facts left undenied may be considered to have been accepted rather may deemed to have been denied. Driver Upendra Kumar had not possessed any type of driving license of Bike & he was driving the over loaded Motorcycle with two pillion riders, hence claimant is not entitled for any compensation from O.P. Ins. Company. The driver of the Motorcycle which is driven negligently and rashly loaded with two pillion rider himself was guilt and responsible for the said accident. And as such the claimant cannot take advantage of the wrong committed by the deceased himself, hence the claimant is not entitled to get any compensation. The deceased & another associate along with motorcyclist was himself negligent there was no fault of driver of dumper No. BR 1G-5728. The Dumper was being driven the left side of road. The motorcycle driver & two rider was so negligent that even after caution of horn by the Dumper Driver but deceased Motorcyclist was driving rashly, negligently & unmindful ply motorcycle middle & zigzag driving on right side of road & subsequently dashed against the Dumper truck, hence there was no negligence of the truck driver rather the deceased was negligent, hence claimant is not entitled for getting any compensation on this score also. The answering O.P. Company craves the leave of this tribunal to file additional written statement or to amend this written statement if and so required any new fact, and circumstances. It is further submitted that in view of the averments made in this written statement the claimants are not entitled for any compensation as claim for in the present case required to be dismissed with cost. It is therefore, prayed that this written statement on behalf of O.P. No.1 United India Insurance Company may kindly be accepted and accordingly claim petition be rejected with cost. And for this, this O.P. No. 1 shall ever prey.

5) On the basis of the pleadings of the parties, following issues were framed by my predecessor on 27.08.2024.

I. Whether the claim petition as framed is maintainable ?

II. Whether the petitioner has got valid cause of action for filing this claim petition ?

III. Whether the deceased Dinesh Kumar Sah died in an accident caused due to due to rash and negligent driving of the driver of Dumper Truck bearing registration No. BR-1G-5728 ?

IV. Whether the aforesaid vehicle was insured with O.P. No. 1 United India Insurance Company Limited at the time of the accident ?

V. Whether the claimant is entitled to get compensation from O.Ps and if so, from which O.P. and upto what extent ?

VI. Whether the claimant is entitled to get any other relief or reliefs?

6) The additional issue was framed by this court on 19.08.2025.

VII. Whether there is any contributory negligence on the part of deceased?

7) The claimant produced three witnesses namely C.W.-01 Shakuntala Devi, C.W.-02 Laxaman Sah and C.W.-03 Shivji Sah @ Shivji Prasad. Claimant also produced documentary evidence Ext.-1 Fard-beyan (without objection), Ext.-2 certified copy formal FIR (without objection), Ext.-03 certified copy of charge-sheet filed in Jagdishpur P.S. case no. 178/2007 (without objection), Ext.-04 photocopy of owner book of vehicle no. BR1G5728 (with objection), Ext.-05 photocopy of Insurance Policy of the vehicle (with objection), Ext.-6 photocopy of the post-mortem report (with objection), Ext.-7 photocopy of death certificate of deceased Dinesh Kumar Sah (with objection), Ext.-8 photocopy of driving license (with objection), Ext.-09 original copy of class 8th certificate of deceased Dinesh Kumar Dinesh Kumar Sah (without objection), Ext.-10 original copy of

application cum admit card of class 8th (without objection), Ext.-11 original copy of admit card of Bihar Vidyalaya Pariksha Samitee, Patna (without objection), Ext.-12 original copy of 10th mark sheet of Bihar Vidyalaya Pariksha Samitee, Patna (without objection), Ext.-13 original copy of character certificate (without objection), Ext.-14 original copy of school leaving certificate (without objection), Ext.-15 original copy of residence certificate (without objection), Ext.-16 original copy of caste certificate (without objection) and Ext.-17 original copy of form of Bihar Intermediate Education Council (without objection). No evidence oral or documentary was led on behalf of the OP.

- 8) I have gone through the testimony of the witnesses, entire material available on the record. I have also given thoughtful consideration to the argument of the learned counsel for the parties.
- 9) **Issue nos. I & II:-** The present claim petition u/s 166 MV Act has been filed by the claimant Shakuntala Devi mother of deceased Dinesh Kumar Sah. The claimant Shakuntala Devi is the resident of village and post-Masurhi, P.S.- Jagdishpur, District-Bhojpur. As per Ext.-01 fardbeyan of Shivji Sah, the accident in question took place on 06.06.2007 about 07:15 O'clock on NH-30 at village Kora, PS-Jagdishpur, District-Bhojpur in which offending vehicle Dumper bearing registration no. BR1G-5728 overran the motorcycle bearing registration no. BR3C-3760 by which deceased Dinesh Kumar Sah was going. Due to which deceased Dinesh Kumar Sah sustained injuries and he died in Ara Sadar Hospital. As per Ext.-2 certified copy of formal FIR Jagdishpur P.S. Case No. 178/2007 dated 06.06.2007, the case was registered u/ss 279/337/338/304(A)/427 IPC against the unknown driver of offending vehicle Dumper bearing registration no. BR1G-5728 for causing accident in which Dinesh Kumar Sah and other persons died, As per Ext.-08 certified copy of charge sheet no. 166/2007 dated 19.08.2007 u/ss 279/337/338/304(A)/427 IPC and section 134 MV Act, it was filed in Ara Nawada P.S. Case No. 178/2007

against Vinod Kumar driver of offending vehicle Dumper bearing registration no. BR1G-5728 for causing death of three persons by rash and negligent driving. The claimant is the legal representative of deceased Dinesh Kumar Sah as she is his mother. As per section sub-section (1)(c) of section 166 M.V. Act, an application for compensation arising out of accident of the nature specified in sub section (1) of section 165 may be made where death has resulted from accident by all or any of the legal representative of the deceased. Further section 166(2) M.V. Act provides that every application under sub-section (1) shall be made at the option of the claimant either to the claim tribunal having jurisdiction over the area in which the accident occurred or to the claim tribunal within the local limits of whose jurisdiction the defendant resides and shall be in such form and contain such particulars as may be prescribed. Here in this case, the claimant is the resident of village and post-Masurhi, P.S.-Jagdishpur, District-Bhojpur which comes within the jurisdiction of this tribunal. The claimant is the mother of deceased Dinesh Kumar Sah. The alleged accident also took place on 06.06.2007 about 07:15 O'clock on NH-30 at village Kora, P.S.-Jagdishpur, District-Bhojpur which comes within the jurisdiction of this tribunal.

- 10) Thus, considering the above stated facts, circumstances, documents and in the light of legal provision contained in the M.V. Act as discussed above, I find that the accident had taken place on 06.06.2007 in which Dinesh Kumar Sah died therefore the claimant has got valid cause of action for filing this claim case and the claim petition filed by claimant is maintainable u/s 166(2) M.V. Act and as such issue No. I & II are decided in favour of the claimant.
- 11) **Issue nos. III** :- C.W.-01 Shakuntala Devi stated that she is the mother of deceased Dinesh Kumar @ Dinesh Kumar Sah and claimant in this case. The accident took place about 07:15 A.M. on 06.06.2007. Her son Dinesh Kumar went from the house in the morning to study that day as usual. On

the way Upendra Kumar took him on his motorcycle bearing registration no. BR3C-3760 and as soon as they were crossing village Kaura, P.S.-Jagdishpur, NH-30, meanwhile a dumper bearing registration no. BR 1G5728 which was being driven by its driver in a rash and negligent manner overran the motorcycle due to which he sustained injuries. Her son died in Ara Sadar Hospital during treatment on the same day after accident. Her son was I.Sc. Student of S.B. College, Ara. C.W.-02 Laxaman Sah stated that the deceased Dinesh Kumar @ Dinesh Kumar Sah was his son. The accident took place about 07:15 A.M. on 06.06.2007. His son Dinesh Kumar went from the house in the morning to study that day as usual. On the way Upendra Kumar took him on his motorcycle and as soon as they were crossing village Kaura, P.S.-Jagdishpur, NH-30, meanwhile a dumper bearing registration no. BR 1G5728 which was being driven by its driver in a rash and negligent manner overran the motorcycle due to which he sustained injuries. His son died in Ara Sadar Hospital during treatment on the same day after accident. His son was I.Sc. Student of S.B. College, Ara. He had not visited the place of occurrence. C.W.-03 Shivji Sah @ Shivji Prasad stated that claimant Shakuntala Devi has filed this case for compensation on account of the death of her son in motor accident and she is his sister in law. The accident took place about 07:15 A.M. on 06.06.2007. His nephew Dinesh Kumar went from the house in the morning to study that day as usual. On the way Upendra Kumar took him on his motorcycle and as soon as they were crossing village Kaura, P.S.-Jagdishpur, NH-30, meanwhile a dumper bearing registration no. BR 1G5728 which was being driven by its driver in a rash and negligent manner overran the motorcycle due to which he sustained injuries. He took his nephew Dinesh Kumar in Ara Sadar Hospital for treatment with the help of police where doctor declared him dead during treatment on the same day after accident. His nephew was I.Sc. Student of S.B. College, Ara . He had not visited the place of occurrence. As per Ext.-01 fard-beyan of Shivji Sah, the accident

in question took place on 06.06.2007 about 07:15 O'clock on NH-30 at village Kora, P.S.-Jagdishpur, District-Bhojpur in which offending vehicle Dumper bearing registration no. BR1G-5728 overran the motorcycle by which deceased Dinesh Kumar Sah was going due to which he sustained injuries and he died in Ara Sadar Hospital. As per Ext.-2 certified copy of formal FIR Jagdishpur P.S. Case No. 178/2007 dated 06.06.2007 u/ss 279/337/338/304(A)/427 IPC, case was registered against the unknown driver of offending vehicle Dumper bearing registration no. BR1G-5728 for causing accident in which Dinesh Kumar Sah and other person died. As per Ext.-08 certified copy of charge sheet no. 166/2007 dated 19.08.2007 u/ss 279/337/338/304(A)/427 IPC and section 134 M.V. Act, it was filed in Ara Nawada P.S. Case No. 178/2007 against the Vinod Kumar, driver of offending vehicle Dumper bearing registration no. BR1G-5728 for causing death of three persons by rash and negligent driving. As per Ext.-6 photocopy of the post-mortem report of Dinesh Kumar Sah, which shows that the post-mortem deceased Dinesh Kumar was conducted on 06.06.2007 at 02:00 P.M. The cause of death of the deceased Dinesh Kumar Sah was injury to internal organ like brain leading to coma and death. As per Ext.-7 photocopy of death certificate dated 29.09.2007 of deceased Dinesh Kumar Sah, he died on 06.06.2007.

- 12) In view of the above discussion, it is clear that claimant has proved that on 06.06.2007 about 07:15 O'clock, an accident was caused due to rash and negligent driving of Dumper bearing registration no. BR1G-5728 in which Dinesh Kumar Sah got injured and died in Sadar Hospital Ara during treatment Accordingly issue No. III are decided in favor of the claimant.
- 13) **Issue nos. IV & VII :-** As per Ext.-5 Photocopy of Insurance Policy, offending vehicle Dumper bearing registration no. BR1G-5728 was insured with the United India Insurance Company Ltd. vide policy no. 210100/31/06/01/00000853 valid and effective from 00:00 Hrs on 01.10.2006 till midnight on 30.09.2007. The accident in question took

place on 06.06.2007. Thus the offending vehicle Dumper bearing registration no. BR1G-5728 had valid and effective insurance policy on the date of the accident. As per Ext.-2 certified copy of formal FIR Jagdishpur PS Case No. 178/2007 dated 06.06.2007 u/ss 279/337/338/304(A)/427 IPC on 06.06.2007 in the morning, deceased Dinesh Kumar Sah was going from his house in village Masuri to Ara for study, meanwhile Upendra Kumar, Jitendra Sah brother in law of Upendra Kumar and two years old son of Upendra Kumar were going by motorcycle Bajaj 100 bearing registration no. BR3C-3760 and they took his Dinesh Kumar Sah on their motorcycle. C.W.-01 Shakuntala Devi stated that The accident took place about 07:15 A.M. on 06.06.2007. Her son Dinesh Kumar went from the house in the morning to study that day as usual. On the way Upendra Kumar took him on his motorcycle bearing registration no. BR3C-3760. C.W.-02 Laxaman Sah stated that. The accident took place about 07:15 A.M. on 06.06.2007. His son Dinesh Kumar went from the house in the morning to study that day as usual. On the way Upendra Kumar took him on his motorcycle. C.W.-03 Shivji Sah @ Shivji Prasad stated that the accident took place about 07:15 A.M. on 06.06.2007. His nephew Dinesh Kumar went from the house in the morning to study that day as usual. On the way Upendra Kumar took him on his motorcycle. Thus it is clear from the documentary and oral evidence of the witnesses that the deceased Dinesh Kumar was third person on the motorcycle. Therefore, the in view of the above discussion deceased Dinesh Kumar Sah is also held to be negligent and the contributory negligence on the part of the part of the deceased is held to be 40%. Accordingly issue no. IV is decided in favor of the claimant and against the OP. Further issue no. VII is partly decided in favor of the O.P. and against the claimant.

- 14) **Issue nos. V & VI:-** The claim petition is filed by Shakuntala Devi mother of deceased Dinesh Kumar Sah. The claimant is mother of deceased therefore she is entitled for compensation. In the claim petition,

the age of the deceased Dinesh Kumar Sah is stated to be 18 years. The witnesses C.W.-1, C.W.-2 and C.W.-3 have also stated in their evidence that the age of the deceased was 18 years. As per Ext.-09 original copy of class 8th certificate of deceased Dinesh Kumar Sah, Ext.-10 original copy of application cum admit card of class 8th, Ext.-11 original copy of admit card of Bihar Vidyalaya Pariksha Samitee, Patna, Ext.-12 original copy of mark sheet of Bihar Vidyalaya Pariksha Samitee, Patna, Ext.-13 original copy of character certificate and Ext.-14 original copy of school leaving certificate, the date of birth of the deceased Dinesh Kumar Sah is 07.06.1989. Thus, the age of the deceased Dinesh Kumar Sah on date of accident is 17 years, 11 months and 29 days. Therefore the age of the deceased for the purpose of compensation is taken as 18 years. Regarding the income of the deceased C.W.-1, C.W.-2 and C.W.-3 have stated in their evidence that the deceased Dinesh Kumar Sah was a student and used to give part time tuition and would earn of Rs. 3500/-. However the claimant has not filed any documentary proof of the income of the deceased Dinesh Kumar Sah. As such in the absence of any document with regard to the earning of the deceased, this court is treating the income of the deceased on the basis of minimum wages effective in the state of Bihar on the date of the accident. Admittedly the accident took place on 06.06.2007 and on that date, the minimum wages of an unskilled labour in Bihar was Rs. 71/- per day and this is taken as the income of the deceased at the time of his death. Rs. 71/- is multiplied by 30 which comes to Rs. 2130/- which is treated as the monthly income of the deceased. The deceased was bachelor as such it would be construed that the deceased spent $\frac{1}{2}$ of his income on his personal expenses, thus the income of the deceased minus personal expenses comes to Rs. 1065/- per month which comes to Rs. 12780/- per year. The deceased was 18 years old at the time of his death as such the multiplier of 18 would be sufficient to calculate the income of the deceased in the light of judgement National Insurance company Limited versus Pranay Sethi and others reported in (2017)16

SCC680. Thus, multiplying the earning of the deceased with the multiplier of 18, it comes to Rs. 2,30,040/- to which 40% is added as future prospect and it comes to Rs. 2,30,040+92016=3,22,056/- which is total loss of the dependency. In addition to this, claimant is also entitled for Rs. 15000/- towards loss of estate, Rs. 4,00,00/- towards loss of consortium as the claimant will carry the sorrow of her son's death for a lifetime, and Rs. 15000/- as funeral expenses. Thus the total compensation comes to Rs 39,2056/- (3,22,056+15000+40000+15000).

Loss of Dependency :- ----- Rs. 3,22,056/-

Loss of Estate:- ----- Rs. 15,000/-

Loss of Consortium:- ----- Rs. 40,000/-

Funeral Expenses:- ----- Rs. 15,000/-

Total:- Rs. 39,2056/-

- 15) Since, the deceased Dinesh Kumar Sah has also been held negligent and his contributory negligence has been held to be 40% therefore in view of above discussion, the claimant is only entitled for 60% of compensation i.e. Rs. 2,35,234/- (Two Lac Thirty Five Thousand Two Hundred Thirty Four). The claimant is also entitled for simple interest of 7% per annum on the amount of compensation from the dated of framing of issues till its realization. Accordingly issue nos. V & VI are decided in favor of claimants.

AWARD

- 16) The present claim petition is allowed. The O.Ps. are jointly and severally liable to pay the compensation. Since the offending vehicle was insured with O.P. No.1, therefore O.P. No. 1 The United India Insurance Company Ltd. is directed to pay compensation to the tune of Rs. 2,35,234/- (Two Lac Thirty Five Thousand Two Hundred Thirty Four) along with 7% simple interest to the claimant within two month from the date of this order by way of cheque. It is further directed that O.P. No. 1 shall have right of recovery from O.P. No. 2 & O.P. No. 3 i.e. owner and

Sudhakar Pandey, P.O. Motor Accident Claim Tribunal, Bhojpur at Ara
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driver respectively of the offending vehicle if there was any violation of the terms and conditions of the insurance policy.

Dated: 10.03.2026

Judgment Pronounced in open court.

Dictated

(Sudhakar Pandey)
District Judge-II
cum
Motor Accident Claim Tribunal
Bhojpur at Ara.
10.03.2026

Dictated and corrected

(Sudhakar Pandey)
District Judge-II
cum
Motor Accident Claim Tribunal
Bhojpur at Ara.
10.03.2026